

RECORDATION NO. 12839

JAN 29 1981 10 23 AM
INTERSTATE COMMERCE COMMISSION

January 23, 1981

RECEIVED
JAN 29 10 16 AM '81
I. C. C.
FEE OPERATION BR.

United States
Rail Services, Inc.



633 Battery Street
San Francisco, California 94111
(415) 445-7690

REGISTERED MAIL
RETURN RECEIPT REQUESTED

No. 1-029AC89
Date JAN 29 1981
Fee \$ 50.00

ICC Washington, D. C.

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Mr. Secretary:

On behalf of United States Rail Services, Inc. I submit for filing and recording under 49 U.S.C., Sec. 11303(a) the following document:

Two executed and notarized copies of Car Lease No. 80-32, dated as of December 30, 1980, between United States Rail Services, Inc. and the Georgetown Railroad Company.

The equipment covered is as follows:

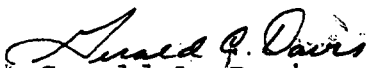
Car Lease No. 80-32: 25, 100-ton Open-Top, Hopper-Cars; numbered GRR 3000 to GRR 3024.

Also enclosed are two certified true copies of the Car Lease and a check in the amount of \$50.00 in payment of the recording fee.

Once the filing has been made please return the following: the filed, stamped conformed counterparts not required for filing purposes; the fee receipt; the letter from the Interstate Commerce Commission acknowledging the filing; and the extra copy of this letter of transmittal.

Should you have any questions I can be reached at (415) 445-7655.

Very truly yours,


Gerald A. Davis
Secretary

Encls.

United States
Rail Services, Inc.



633 Battery Street
San Francisco, California 94111
(415) 445-7690

RECORDATION NO. 12839

JAN 29 1981 - 10 25 AM
INTERSTATE COMMERCE COMMISSION

CAR LEASE

Lease Number: 80-32

Date: December 30, 1980

United States Rail Services, Inc. ("Lessor") leases to the Georgetown Railroad Company ("Lessee") and Lessee leases from Lessor twenty-five (25), 100-ton Open-Top, Hopper-Cars (HT) (the "Cars") numbered GRR 3000 to GRR 3024 under the following terms and conditions:

1. **Lease Term:** The lease term for each Car commences on the date of arrival of that Car at the railroad yard of the Missouri-Kansas-Texas Railroad at St. Louis, Missouri and continues in effect for six (6) months thereafter. After such six (6) month period, this Lease shall continue on a month to month basis unless terminated by either party upon thirty (30) days written notification one to the other. The Lessor's obligation to deliver the Cars to Lessee is subject to all delays and contingencies beyond the control of the Lessor.

2. **Rent:** The rental for the Cars (including any amounts earned prior to the lease term commencement) shall be an amount equal to the first eighty percent (80%) of all hourly time charges earned while off the lines of the Lessee plus one-hundred percent (100%) of all mileage charges earned while off the lines of the Lessee.

3. **Accounting and Payment:** Lessee shall perform all car accounting functions and forward a report to Lessor within sixty (60) days following the end of each service month, along with all appropriate and reasonable supporting documents which Lessor may request, which will clearly show a breakdown of all amounts collected and to which period they apply. At the end of each Service Month, Lessee shall pay as available funds in San Francisco CA., Lessor's share of any monies collected in such Service month. All additions or reductions determined to be necessary after a payment is made will be properly accounted for and adjusted on the next regular payment date. If it is determined that Lessor owes monies to Lessee, Lessor will forward such monies to Lessee within five (5) business days of such determination.

4. **Inspection of Cars:** Lessee shall inspect each Car promptly upon its initial interchange to the Georgetown Railroad Company and, if repairs are necessary, notify Lessor thereof within one week following such initial interchange. The first loading on the lines of the Lessee of a Car will constitute conclusive evidence that such Car is fit and in suitable condition for transporting the commodities then and thereafter loaded in that Car, and that the Car meets all of Lessee's requirements.

5. Use and Operation:

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled during the lease term to the control, use and quiet enjoyment of the Cars in accordance with the terms and conditions of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business. Lessor shall not be liable for any consequential damages or loss of profits resulting from the loss of, damage to or unavailability of any Car for any reason whatsoever.

B. Lessee will not:

1. Transfer, assign, sublet (except in normal interchange service), encumber or dispose of this Agreement or of any of the Cars or any part of a Car or permit any encumbrance or lien to be entered or levied upon any of the Cars;

2. Change or permit to be changed, altered or obscured the identification marks, lettering, and/or numbering on the Cars;

3. Alter in any way the physical structure of the Cars;

4. Allow its name or the name of any other person, or entity to be placed on any of the Cars, except that Lessee shall have the right to place on each Car, markings in accordance with AAR guidelines, requesting Cars be returned to Lessee when empty (such markings shall be applied, maintained and removed by Lessee at end of lease term and before return of Cars);

5. Use the Cars outside of the boundaries of the contiguous United States.

6. Use any of the Cars in unit train service.

7. Load, or allow others to load, any Car in excess of 263,000 pounds total gross on rail.

8. Voluntarily raise or lower the hourly time charges in effect on the Cars.

C. In the event any Cars are used outside of the area as specified in subparagraph B.5 above, for any reason whatsoever, Lessee shall bear full responsibility for and assume any and all costs, duties and taxes (including loss of any United States Investment Tax Credits) resulting from, assessed or incidental to their use in or exportation of Cars to the prohibited areas.

6. **Indemnity:** Lessor will defend, indemnify and hold Lessee harmless from and against any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Cars *provided, however*, Lessor shall not indemnify Lessee or hold Lessee harmless from claims for any consequential damages or loss of profits including such as may result from or be caused by any loss or damage to a Car, or the unavailability of any Car for any reason; and *provided, further*, in no event shall Lessor be obligated to defend, indemnify, or hold Lessee harmless from:

A. any loss or damage to any lading or part of any lading carried by any Car;

B. any loss or damage resulting from Lessee's breach of this Agreement;

C. any loss or damage to a Car resulting from a failure by Lessee to note damages or necessary repairs or maintenance at the time of interchange of a Car;

D. any loss or damage of any kind resulting from any negligent act or omission of Lessee; or

E. any loss or damage of any kind whatsoever, regardless of how caused, occurring upon Lessee's premises or resulting from an occurrence or event involving any Car while on Lessee's premises.

7. **Taxes:** Lessee shall file all property tax reports relating to the Cars during the term of this Agreement. Lessor shall reimburse Lessee for its payment of all taxes, assessments and other governmental charges of whatsoever kind or character relating to each Car and on the lease, delivery or operation thereof which remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the term, except taxes on the net income of Lessee and sales or use taxes imposed on car hire revenues. Lessee shall make available or send copies of all information reasonably necessary for Lessor to confirm the amount for which Lessee requests reimbursement from Lessor.

8. **Maintenance; Loss; Improvements:**

A. **Lessor's Responsibility:** Except as provided in Section 8.B, Lessor shall bear the cost of any loss of or damage to the Cars, and shall perform, or cause to be performed, at its expense all necessary periodic inspections, repairs, servicing, and maintenance. Lessor and its agents shall have the right at any time during reasonable business hours and upon reasonable notice to inspect any Car then on Lessee's line. Lessee shall cooperate with Lessor whenever Lessor desires to make an inspection of a Car on the line of another railroad. Lessor shall be entitled to and Lessee shall take such action as Lessor may request to assure that Lessor receives all amounts and damages payable by, or due from, any railroad or other person or entity by reason of the loss or damage (whether total or partial) to a Car.

THE STATE OF TEXAS

COUNTY OF WILLIAMSON

100

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared W. P. LUDWIG, JR., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 16th day of January,
A. D. 1981.



NOTARY PUBLIC in and for
Williamson County, Texas

ACKNOWLEDGMENT FOR CORPORATION

STATE OF California, COUNTY OF San Francisco SS:

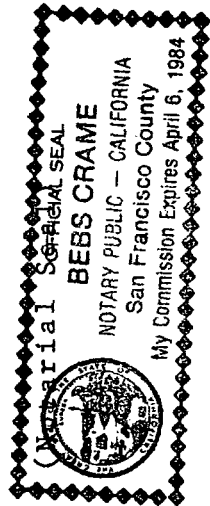
On this 30th day of December, in the year 1980, before
me Bebbs Crame a Notary Public in and for said county,
personally appeared David M. Mendelsohn, known to me to be the
Senior Vice President of the corporation that executed the

(Title)

within instrument, and known to me to be the person who executed the
within instrument on behalf of the corporation therein named, and
acknowledged to me that such corporation executed the within instrument
pursuant to its by-laws or a resolution of its Board of Directors.

Bebbs Crame San Francisco COUNTY, California
(Notary Public) (State)

My Commission Expires: 4/6/84



12. **Warranties:** LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE CARS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND LESSEE LEASES THE CARS AS-IS.

13. **Default, Remedies:** If Lessee fails to pay when due any amount required to be paid by this Agreement or to perform any of its obligations under this Agreement, or if a petition in bankruptcy or for reorganization is filed by or against Lessee, Lessor may exercise any one or more of the following remedies:

- A. sue for and recover all amounts then due and as they become due hereunder;
- B. take possession of any or all of the Cars, without demand or notice, without court order or other process of law and without liability for any damages occasioned by the taking of possession;
- C. terminate this Lease as to any or all of the Cars; and/or
- D. pursue any other remedy at law or in equity.

A termination under this Section will occur only after written notice to Lessee of Lessor's election to exercise that remedy, and only with respect to those Cars as Lessor specifies in its notice. The Agreement will continue in full force and effect as to all other Cars, and Lessee shall be and remain liable for the full performance of its obligations under this Agreement as to those other Cars. If Lessor gives such notice with respect to any Car, Lessee shall promptly return that Car to Lessor in the manner and condition specified in Section 9 of this Agreement. Lessee's obligations as to that Car, shall continue until the Car has been so returned at which time the Agreement will be deemed to be terminated with respect to that Car except that Lessee shall continue to remit to Lessor all amounts due it as and when received. The party prevailing shall be paid all costs and expenses, including attorney's fees and court costs, incurred by it in exercising any of its rights or remedies under this Agreement or in enforcing any of the provisions of this Agreement.

14. **Lease Subordinated:** This Agreement is subject and subordinate to any chattel mortgage, conditional sales agreement or equipment trust covering any of the Cars heretofore or hereafter created.

15. **Time of Essence:** Time is of the essence of this Agreement and to each of its provisions.

16. **Notices:** All notices given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered or mailed by certified mail, return receipt requested, postage prepaid to the parties, in care of the officers who executed this Agreement, at their addresses set out below.

17. **Governing Law:** This Agreement shall be governed by the Laws of the State of California.

18. **Assignment:** Subject to the foregoing, this Agreement inures to the benefit of and is binding upon the successors and assigns of the parties.

19. **Complete Agreement:** This Agreement is the complete agreement between the parties and may be amended or modified only in writing as executed by them. If any provision of this Agreement is determined to be invalid, the remaining provisions will continue to be fully effective.

Lessee:

GEORGETOWN RAILROAD COMPANY, INC.
310 Austin Avenue
Georgetown, TX 78626

Lessor:

UNITED STATES RAIL SERVICES, INC.
633 Battery Street
San Francisco, CA 94111

By: 
Title President

By: 
Title Vice President

B. Lessee's Responsibility: Lessee shall be responsible for and bear the cost of:

1. any loss of or damage to a Car occurring while on Lessee's line in the same manner that Lessee is responsible under applicable rules (including AAR Code of Car Service Rules-Freight, AAR Code of Car Hire Rules and Interpretations-Freight, and AAR Interchange Rules) for Cars not owned by Lessee while on Lessee's lines;
2. any damage to the Car, or any maintenance or repairs required for the Car which exist or are required but are not noted by Lessee at any time the Car is interchanged to it; and
3. any losses, damages or liabilities resulting from any negligent acts or omissions of Lessee.

Lessee shall perform at Lessor's expense, running repairs to facilitate continued and immediate use of the Cars, and repairs required by the AAR Interchange Rules for the continued use of the Cars, but shall perform no other maintenance or repairs at Lessor's expense except as may be reasonably requested by Lessor. Lessee shall promptly perform in its ordinary course of business any such repair or maintenance requested by Lessor.

WBL 9. ~~Release of the Cars From Service:~~ Upon the termination of this Agreement, Lessee shall, at its expense, return the Cars to Lessor ~~at the location and to the agent selected by Lessor~~ ^{on the MKT RR, St. Louis, Missouri or any other mutually agreeable point} in the same good order and condition as the Cars were at their initial loading on Lessee's line, ~~empty, clean, and free from residue~~ ^{normal wear and tear excepted}. When the Cars have been so returned, they shall be deemed to have been released from service.

10. Insurance:

A. Insurance: At its own expense, Lessee shall maintain in full force and effect, throughout the term and until the Cars are returned as provided in Section 9:

1. Insurance for "All Risk" of physical damage or loss to the Cars (such insurance shall at least cover the Cars while on Lessee's line, be in amounts and with companies satisfactory to Lessor and include Lessor (and any party designated by Lessor) as an Additional Insured as its respective interests may appear); and
2. Public liability insurance (including liability assumed under contract), with respect to the Cars in amounts and with companies satisfactory to Lessor, against any damages resulting from Bodily Injury or death to members of the public, including all employees of Lessee, and for damage to the property of others including the loss of use thereof (Lessor, and any party designated by Lessor, shall be included as an Additional Insured).

B. Insurance Certification: Lessee shall provide Lessor appropriate Certificates of Insurance evidencing the foregoing insurance and providing that such insurance is only cancellable as to Lessor's (and any such designated party's) interest upon thirty (30) days' prior written notice to Lessor.

C. Lessee Self Insurance: Lessee may, with Lessor's prior written consent, maintain a self insurance program satisfactory to Lessor in lieu of the coverages required. *(Letter attached "Self Insurance" Financial Statement)* *WBL*

11. Removal of Cars; Lessee's Optional Payment: In the event Lessee retains the Cars on its lines during any service month for a total aggregate number of hours in excess of 3,600, Lessor shall have the right to terminate this Agreement on 72-hours notice given within 14 days following the end of such month. Lessee may retain such Cars if, within such 72-hour period, Lessee shall pay to Lessor the sum of the following:

- A. the published hourly time charge for such Cars in effect on the first day of such month multiplied by the difference ("Difference") between 3,600 and the total number of hours such Cars were on the Lessee's line in such month; plus
- B. the product of the published mileage charge for such Cars in effect on the first day of such month multiplied by 50, multiplied by the number of full twenty-four (24) periods in such Difference.